

Question #2b

What is the process for applying to the Corps of Engineers for a 404 permit when the NEPA environmental document is considered to be a categorical exclusion (CE)?

Answer #2b:

1. Get NEPA clearance.
2. Apply to the Corps (USACE) for the 404 permit; attach the approved NEPA document.

In a recent conversation with the U.S. Army Corps of Engineers' Wehrspan office, a new environmental process is being put into place for federal-aid transportation projects, so it's understandable that there be some confusion. Hopefully, the following will help clear up how the NEPA approval process for CE documents dovetails with 404 permit applications, for local federal-aid projects.

If the project is considered to be a "categorical exclusion" an application for a 404 nationwide 23 permit is not complete without a NEPA document approved by NDOR and/or FHWA. As of this writing, the Corps prefers nationwide 23 permits for federal-aid projects.

To clarify, it is NOT required or useful to submit a 404 permit application to the USACE in order to get approval of a project classified as a categorical exclusion. All that is needed when filling out the NEPA Determination Form is to check the box saying that a 404 permit will be required. When you send the USACE the 404 permit application after NEPA approval, attach the approved NEPA document." – Jim Wilkinson, NDOR Local Projects Engineer, 12/5/08.

Following are some helpful materials for understanding and completing 404 permit applications, compliments of Jason Jurgens, NDOR Highway Environmental Programs Manager (Environmental Permits Unit):

NOTE: you may get a security certificate error when trying to open these items from the military. Just click through them by selecting the Open option.

The following is the home page for the Nebraska Office of the Omaha District USACE.
<https://www.nwo.usace.army.mil/html/od-rne/nehome.html>

The following is a short cut to the nationwide permits, general conditions, and definitions. Pay attention to #9, #12 and #33. <https://www.nwo.usace.army.mil/html/od-r/nwp-newtext.html>

Regional conditions for Nebraska: <https://www.nwo.usace.army.mil/html/od-rne/regcoNE.pdf>

You may want to look at the EPA 401 water quality certification as well, these conditions must be met to attain a nationwide permit but are generally applied to individual permits as well.

https://www.nwo.usace.army.mil/html/od-rne/EPA7_401ltr.pdf

Last but not least, you need to refer to NDEQ's 401 Water Quality Certification.

[NWP-401-WQC.pdf](#)